रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 47] नई दिल्ली, वृहस्पतिवार, मई 27, 1976/ज्येष्ठ 6, 1898
No. 47] NEW DELHI, THURSDAY, MAY 27, 1976/JYAISTHA 6, 1898

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajaya Sabha on the 27th May, 1976:—

I

BILL No. XXVI OF 1976

A Bill to amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1976. Short title.

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in section 2, in clause (*j*), the words "and such local area may comprise the whole of the State, or any part of the State, as the State Government may, by notification, specify" shall be inserted at the end. Amendment of section 2.

2 of 1974.

3. In section 9 of the principal Act, to sub-section (6), the following proviso shall be added, namely:— Amendment of section 9.

"Provided that the High Court may, if requested by the Central Government or State Government so to do in the interests of the security of the accused person or for the maintenance of public order or for any other like reason, by an order direct a Court of Session to hold its sitting at such other place within its local jurisdiction (including a prison or other place where the accused person is detained) as may be specified in the order.".

Amendment of section 11.

4. In section 11 of the principal Act, to sub-section (*1*), the following proviso shall be added, namely:—

"Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular classes of cases, and where any such Special court is established, no other court of Magistrate in the local area shall have jurisdiction to try any case or classes of cases for the trial of which such Special court of Judicial Magistrate has been established.".

Amendment of section 13.

5. In section 13 of the principal Act,—

(*i*) in sub-section (*1*), for the words "or to cases generally, in any district, not being a metropolitan area", the words "in any local area, not being a metropolitan area" shall be substituted;

(*ii*) in the proviso to sub-section (*1*), after the words "shall be conferred", the words ", under this sub-section," shall be inserted;

(*iii*) sub-section (*2*) shall be re-numbered as sub-section (*3*), and before sub-section (*3*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), or elsewhere in this Code, the State Government may confer on any gazetted officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class to try,—

(*i*) such offences or classes of offences as are punishable, under any special law for the time being in force, with imprisonment for a term not exceeding one year, or with fine, or with both;

(*ii*) offences punishable under section 160, or under Chapter XIII or under Chapter XIV, of the Indian Penal Code; 45 of 1860.

(*iii*) offences punishable under section 34 of the Police Act, 1861."; 5 of 1861.

(*iv*) in sub-section (*3*) as so re-numbered, for the words "Such Magistrates", the words "Persons on whom the powers of a Magistrate are conferred under sub-section (*1*), or under sub-section (*2*), as the case may be," shall be substituted;

(*v*) after sub-section (*3*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*4*) The High Court may specially authorise a Special Judicial Magistrate to exercise the powers of a Special Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.".

Amend-ment of section 14.

6. In section 14 of the principal Act,—

(*a*) to sub-section (*1*), the following provisos shall be added, namely:—

"Provided that the High Court may, if requested by the Central Government or State Government so to do in the interests of the security of the accused person or for the maintenance of public order or for any other like reason, by an order direct a court of a Judicial Magistrate to hold its sitting at such place within its local jurisdiction (including a prison or other place where the accused person is detained) as may be specified in the order:

Provided further that the court of a Special Judicial Magistrate may hold its sitting at any place within the local area for which it is established.";

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Where the local jurisdiction of a Magistrate, appointed under section 11 or section 13 or section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, for which he has been appointed (hereafter in this sub-section referred to as the original district or metropolitan area), any reference in this Code to the Court of Session, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such part of the local jurisdiction as extends beyond the original district or metropolitan area, be construed, unless the context otherwise requires, as a reference to the Court of Session, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the original district or metropolitan area.".

Amend-ment of section 18.

7. In section 18 of the principal Act,—

(*i*) in sub-section (*1*), the words "or to cases generally" shall be omitted;

(*ii*) in the proviso to sub-section (*1*), after the words "shall be conferred", the words ", under this sub-section," shall be inserted;

(*iii*) sub-sections (*2*) and (*3*) shall be re-numbered as sub-sections (*3*) and (*4*), respectively, and before sub-section (*3*), as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in sub-section (*1*), or elsewhere in this Code,—

(*i*) the High Court may, if requested by the Central or State Government so to do, empower any Metropolitan Magistrate to exercise in any local area outside the metropolitan area, the powers of a Judicial Magistrate of the first class or of a Special Judicial Magistrate of the first class;

(*ii*) the State Government may confer on any gazetted officer, functioning as an Executive Magistrate, the powers of a Metropolitan Magistrate to try,—

(*a*) such offences or classes of offences as are punishable, under any special law for the time being in force, with imprisonment for a term not exceeding one year, or with fine, or with both;

(*b*) offences punishable under section 160, or under Chapter XIII or under Chapter XIV, of the Indian Penal Code; 45 of 1860.

(*c*) offences punishable under section 34 of the Police Act, 1861."; 5 of 1861.

(*iv*) in sub-section (*3*) as so re-numbered, for the words "Such Magistrates", the words "Persons on whom powers of a Metropolitan Magistrate are conferred under sub section (*1*), or under sub-section (*2*), as the case may be," shall be substituted.

Amendment of section 24.

8. In section 24 of the principal Act,—

(*i*) in sub-section (*1*), after the words "Public Prosecutor", the words "and also one or more Additional Public Prosecutors" shall be inserted;

(*ii*) after sub-section (*6*), the following sub-section shall be inserted, namely:—

"(*7*) For the purposes of sub-sections (*5*) and (*6*), the period during which a person has been in practice as a pleader or has rendered service as a Public Prosecutor, Additional Public Prosecutor or Assistant Public Prosecutor shall be deemed to be the period during which such person has been in practice as an advocate.".

Amendment of section 25.

9. In section 25 of the principal Act,—

(*i*) **in sub-section (*1*), for the words "The State Government", the words "The Central Government or the State Government" shall be substituted;**

(*ii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) Nothing contained in this section shall preclude the State Government from conferring on the Inspector General of Police the powers of administrative control and supervision over the Assistant Public Prosecutors appointed by it.".

Amendment of section 107.

10. In section 107 of the principal Act, in sub-section (*1*), after the words "ordered to execute a bond,", the words "with or without sureties," shall be inserted.

Amendment of section 123.

11. In section 123 of the principal Act,—

(*i*) in sub-section (*1*), for the words "the Chief Judicial Magistrate", the words and figures "the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case" shall be substituted;

(*ii*) in sub-sections (*2*), (*5*), (*6*), (*7*) and (*9*), for the words "Chief Judicial Magistrate", wherever they occur, the words and

figures "District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case" shall be substituted.

Amendment of section 164.

12. In section 164 of the principal Act, after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) The powers conferred by sub-section (*1*) may also be exercised by a person on whom the powers of a Judicial Magistrate of the first class have been conferred under section 13 or a person on whom the powers of a Metropolitan Magistrate have been conferred under section 18.".

Amendment of section 167.

13. In section 167 of the principal Act, in the proviso to sub-section (*2*),—

(*a*) for paragraph (*a*), the following paragraph shall be substituted, namely:—

"(*a*) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(*i*) one hundred and twenty days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(*ii*) sixty days, where the investigation relates to any other offence,

and, on the expiry of the said period of one hundred and twenty days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;";

(*b*) after paragraph (*a*), the following paragraph shall be inserted, namely:—

"(*aa*) an Executive Magistrate, on whom the powers of a Special Judicial Magistrate or a Special Metropolitan Magistrate have been conferred, may authorise the detention of the accused person for a period not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail if he is prepared to and does furnish bail except where an order for the further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders of an Executive Magistrate,

specially authorised under this paragraph, shall be taken into account in computing the period specified in paragraph (*a*);";

(*c*) in paragraph (*b*), for the words "no Magistrate shall", the words "no Magistrate shall, except for reasons to be recorded in writing," shall be substituted;

(*d*) the *Explanation* shall be numbered as *Explanation II*, and before *Explanation II*, as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation I.*—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (*a*), the accused shall be detained in custody so long as he does not furnish bail.".

Amendment of section 167 to apply to pending investigations.

14. The provisions of section 167 of the principal Act, as amended by this Act, 1976, shall apply to every investigation pending immediately before the commencement of this Act, if the period of detention of the accused person, otherwise than in the custody of the police, had not, at such commencement, exceeded sixty days.

Amendment of section 196.

15. In section 196 of the principal Act, in sub-section (*2*), for the words "a cognizable offence", the words "an offence" shall be substituted.

Amendment of section 206.

16. In section 206 of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (*1*) in relation to any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both, where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.".

Amendment of section 208.

17. In section 208 of the principal Act,—

(*i*) in the proviso, after the words "such document is voluminous", the words "or is of such a nature that it is not practicable to furnish a copy thereof" shall be inserted;

(*ii*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no inspection, referred to in the foregoing proviso, shall be allowed if the head of the department, having custody of such document, claims on affidavit that the disclosure of such document would be prejudicial to the public interest or the security of the State.".

Amendment of section 209.

18. In section 209 of the principal Act, for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) commit, after complying with the provisions of section 207 or section 208, as the case may be, to the Court of Session, and, sub-

ject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;".

Amendment of section 276.

19. In section 276 of the principal Act, for sub-section (*2*), the following sub-section shall be substituted, namely:—

"(*2*) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of questions and answers.".

Amendment of section 277.

20. In section 277 of the principal Act, in clause (*a*), after the words "taken down in that language", the words "or if it is not practicable to do so, it shall be taken down in Hindi or in English" shall be inserted.

Amendment of section 297.

21. In section 297 of the principal Act, in sub-section (*1*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) any Judge or any Judicial or Executive Magistrate, or".

Amendment of section 299.

22. In section 299 of the principal Act, in sub-section (*1*), after the words "competent to try", the words " , or to commit for trial," shall be inserted.

Amendment of section 309.

23. In section 309 of the principal Act, in sub-section (*2*), after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

Amendment of section 320.

24. In section 320 of the principal Act, in the Table under sub-section (*1*), in column 1, for the word "Defamation", the words, figures and brackets "Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the Table under sub-section (*2*)" shall be substituted.

45 of 1860.

Amendment of section 323.

25. In section 323 of the principal Act, the following shall be inserted at the end, namely:—

"and thereupon the provisions of Chapter XVIII shall apply to the commitment so made".

Amendment of section 326.

26. In section 326 of the principal Act,—

(*i*) in sub-section (*1*), for the word "Magistrate", wherever it occurs, the words "Judge or Magistrate" shall be substituted;

(*ii*) in sub-section (*2*), for the words "from one Magistrate to another Magistrate", the words "from one Judge to another Judge or from one Magistrate to another Magistrate" shall be substituted.

Amendment of section 374.

27. In section 374 of the principal Act, in sub-section (*2*), for the words "has been passed", the words "has been passed against him or against any other person convicted at the same trial" shall be substituted.

Amendment of section 428.

28. In section 428 of the principal Act, after the words "sentenced to imprisonment for a term,", the words "not being imprisonment in default of payment of fine," shall be inserted.

Omission of section 438.

29. Section 438 of the principal Act shall be omitted.

Amendment of section 468.

30. In section 468 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the longest term of imprisonment.".

Amendment of section 478.

31. In section 478 of the principal Act,—

(*i*) the words "after consultation with the High Court," shall be omitted;

(*ii*) in clause (*a*), after the figures "110", the words "or in any of them" shall be inserted;

(*iii*) in clause (*b*), after the figures "147", the words "or in any of them" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Code of Criminal Procedure, 1973 came into force on the 1st day of April, 1974. The working of the new Code has been carefully watched and in the light of the experience, it has been found necessary to make a few changes for removing certain difficulties and doubts. The notes on clauses explain in brief the reasons for the amendments.

NEW DELHI; F. H. MOHSIN

The 18th May, 1976.

Notes on clauses

Clause 2.—Under the Code, the local jurisdiction of a Magistrate is limited to the district. The definition of the expression "local jurisdiction" in section 2(*j*) is being amended to empower the State Government to define, in suitable cases, the local jurisdiction of a Magistrate as extending to the whole of the State or to any part thereof.

Clause 3.—Under the Code, a Court of Session ordinarily holds its sitting at the place or places specified by the High Court. Sub-section (*6*) of section 9 is being amended to empower the High Court to direct a Court of Session to hold its sitting at any place (other than its normal place of sitting), including a prison or other place, where the accused is detained. This power can be exercised only when it is necessary to do so in the interests of the security of the State or for the protection of the accused person or for any other like reason.

Clause 4.—Sub-section (*1*) of section 11 is being amended to empower the State Government to establish Special Courts of Judicial Magistrates for any local area and to confer on such courts exclusive jurisdiction to try any particular case or particular classes of cases.

Clause 5.—The proviso to sub-section (*1*) of section 13 is being amended to make it clear that the qualifications, referred to therein, are required to be possessed only by those persons on whom powers are conferred under sub-section (*1*) of section 13.

The State Government is being empowered to confer, on any gazetted officer functioning as an Executive Magistrate, the powers of a Judicial Magistrate of the first or of the second class to try the types of offences specified in sub-section (*2*).

The High Court is also being empowered to authorise a Special Judicial Magistrate to exercise the powers of a Special Metropolitan Magistrate in relation to any metropolitan area outside his local jurisdiction.

Clause 6.—Section 14(*1*) is being amended to empower the High Court to direct the Court of a Judicial Magistrate to hold its sitting at any place (other than the normal place of its sitting), including a prison or other place, where the accused is detained. This power can be exercised only when it is necessary to do so in the interests of the security of the State or for the protection of the accused person or for any other like reason.

New sub-section (3) is being inserted in section 14 to provide that, where the local jurisdiction of a Magistrate extends beyond the district for which he has been appointed (hereinafter referred to as the original district) or a metropolitan area, references in the Code to the Court of Session or Chief Judicial Magistrate or Chief Metropolitan Magistrate shall, in relation to the area beyond such district or metropolitan area, be construed as references to the Court of Session, Chief Judicial Magistrate or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction over the original district.

Clause 7.—The proviso to sub-section (*1*) of section 18 is being amended to clarify that persons, on whom the powers of Special Metropolitan Magistrates are conferred under sub-section (*1*), should have the prescribed qualifications.

The State Government is being empowered to appoint a gazetted officer, functioning as an Executive Magistrate, as a Metropolitan Magistrate to try the types of offences specified in the section.

Clause 8.—Sub-section (*1*) of section 24 is being amended to enable the appointment of Additional Public Prosecutors.

New sub-section (7) is being inserted to provide that for the purpose of determining the eligibility of a person for appointment as a Public Prosecutor or Additional Public Prosecutor, the period of his practice as a pleader or service as a Public Prosecutor or as an Assistant Public Prosecutor will be reckoned as the period of his practice as an advocate.

Clause 9.—Section 25 is being amended to empower the Central Government to appoint Assistant Public Prosecutors.

New sub-section (4) is being inserted in section 25 to clarify that the provisions of the section will not preclude the State Government from conferring on the Inspector-General of Police the powers of administrative control and supervision over the Assistant Public Prosecutors appointed by it.

Clause 10.—Section 107 of the Code is being amended to provide that a person concerned may be required to execute the bond with or without sureties. The amendment has become necessary to enable the Government to deal effectively with cases of breach of the peace.

Clause 11.—Section 123 of the Code is being amended to empower the District Magistrate to release persons imprisoned for failure to give security in a case where such person was ordered by an Executive Magistrate to furnish security.

Clause 12.—Section 164 is being amended to provide that a Special Judicial Magistrate of the first class will also be competent to record a confession or statement.

Clause 13.—Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 120 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for ten years or more and up to 60 days in any other case. These amendments are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new clause is being inserted empowering an Executive Magistrate, on whom the powers of a Special Judicial Magistrate have been conferred, to make an order for remand of an accused for a period not exceeding seven days in the aggregate. The period of detention ordered by an Executive Magistrate will, however, be taken into account in computing the total period specified in clause (*a*). This is being done with a view to overcoming the difficulties arising out of a shortage of judicial magistrates in the remote areas.

Clause (*b*) of the proviso to sub-section (*2*) is being amended to provide that the requirement that the accused person should be produced before the Magistrate making an order for remand may be waived by the Magistrate for the reasons to be recorded by him.

A new *Explanation* is being inserted to clarify that, where the accused person does not furnish bail within the period specified in paragraph (*a*), the accused person would continue to be in detention.

Clause 14.—Clause 14 clarifies that the amendments made to section 167 would apply to pending investigations.

Clause 15.—Sub-section (*2*) of section 196 restricts the power of the Court to take cognizance of the offence of any criminal conspiracy punishable under section 120B, I.P.C., other than a criminal conspiracy to commit a cognizable offence which is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards. The sub-section is being amended to extend the exception to all offences falling within the sub-section, including non-cognizable offences.

Clause 16.—New sub-section (*3*) is being inserted in section 206 to enlarge the scope of the facility provided by that section so that the State Government may specially empower a Magistrate to exercise the powers conferred by sub-section (*1*) in relation to any offence punishable with imprisonment for a term not exceeding three months, where a Magistrate is of opinion that imposition of fine only would meet the ends of justice.

Clause 17.—Section 208 is being amended to provide that, instead of giving a copy of the document, inspection may be allowed if the document is of such a nature that it is not practicable to furnish a copy thereof.

A new proviso is being inserted to provide that no such inspection will be allowed if privilege is claimed by the head of the department, having custody of the document.

Clause 18.—Clause (*a*) of section 209 is being substituted by a new clause to clarify that the commitment is to be made after complying with the provisions of section 207 or 208 and that the committing Court will have the power to make an order for the remand of the accused in custody until the commitment has been made. These amendments are being made to remove a doubt.

Clause 19.—Section 276 is being amended to provide that ordinarily evidence shall be taken down in the form of a narrative.

Clause 20.—Section 277 is being amended to provide that evidence given in the language of the Court may be taken down in Hindi or English, if it is not practicable to take down such evidence in the language of the Court.

Clause 21.—Section 297 is being amended to provide that an affidavit may be sworn before any Judge or any Judicial or Executive Magistrate.

Clause 22.—Section 299 is being amended with a view to providing that in the case of an absconding accused, a Court competent to commit him for trial shall also be competent to record evidence in the absence of the accused.

Clause 23.—Sub-section (*2*) of section 309 is being amended to provide that adjournment shall not be granted only for the purpose of enabling the accused to show cause against the proposed sentence.

Clause 24.—The Table under sub-section (*1*) of section 320 is being amended to provide that only those cases of defamation may be compounded without the permission of the Court as are not mentioned against section 500, I.P.C., in column 1 of the Table under sub-section (*2*) of section 320.

Clause 25.—Section 323 is being amended so as to clarify that, where a commitment is made by a Magistrate after inquiry and trial, the procedure specified in Chapter XVIII shall apply to the commitment so made.

Clause 26.—Section 326 is being amended to empower a succeeding Judge to act on the evidence partly recorded by his predecessor.

Clause 27.—Section 374 is being amended to provide a right of appeal to a person where an appealable sentence has been passed against such person or against any other person convicted at the same trial.

Clause 28.—Section 428 is being amended to provide that the section will not apply to an imprisonment in default of payment of fine.

Clause 29.—Section 438, which provides for anticipatory bail, is being omitted.

Clause 30.—Section 468 is being amended to provide that, for the purpose of computing the period of limitation in relation to offences which may be tried together, the offence for which the longest sentence can be imposed shall be taken into account.

Clause 31.—Section 478 is being amended to dispense with the requirement of consultation with the High Court and also clarify that the sections referred to in clauses (*a*) and (*b*) mean those sections or any of them.

FINANCIAL MEMORANDUM

The Bill provides for the appointment of Additional Public Prosecutors by the Government. This is only an enabling provision and the power is meant to be exercised only when the occasion demands. The appointment of Assistant Public Prosecutors by the Central Government will generally be made from departmental officers. Necessary provisions for these will be made in the appropriate budget as and when the occasion arises. It is, therefore, not possible to give an estimate of the actual expenditure in this behalf at this stage.

II

BILL NO. XXVII OF 1976

A Bill further to amend the Essential Commodities Act, 1955.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Essential Commodities (Amendment) Act, 1976. Short title.

10 of 1955. 2. In section 2 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act), before clause (*a*), the following clause shall be inserted, namely:— Amendment of section 2.

'(*ia*) "Collector" includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act;'.

3. In section 3 of the principal Act,— Amendment of section 3.

(*a*) in sub-section (2),—

(i) for clause (*f*), the following clause shall be substituted, namely:—

'(*f*) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,—

(*a*) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(*b*) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order,

Explanation 1.—An order made under this clause in relation to foodgrains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2.—For the purpose of this clause, "production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;';

(*ii*) in clause (*j*), for sub-clause (*iii*), the following sub-clause shall be substituted, namely:—

"(*iii*) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.";

(*b*) for sub-section (*3B*), the following sub-section shall be substituted, namely:—

"(*3B*) Where any person is required, by an order made with reference to clause (*f*) of sub-section (*2*), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (*3A*), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (*3*), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to—

(*a*) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(*b*) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(*d*) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.".

Amendment of section 6A.

4. Section 6A of the principal Act shall be re-numbered as sub-section (*1*) thereof and—

(*a*) in sub-section (*1*), as so re-numbered,—

(*i*) for the words "it may be produced, without any unreasonable delay, before", the words "a report of such seizure shall, without unreasonable delay, be made to" shall be substituted, and for the words "if satisfied", the words "may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied" shall be substituted;

(*ii*) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.";

(*b*) after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (*1*), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(*i*) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(*ii*) where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(*3*) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any

such sale or auction or other incidental expenses relating thereto, shall—

(*a*) where no order of confiscation is ultimately passed by the Collector,

(*b*) where an order passed on appeal under sub-section (*1*) of section 6C so requires, or

(*c*) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted be paid to the owner thereof or the person from whom it is seized.".

Amendment of section 6B.

5. In section 6B of the principal Act, after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) No order confiscating any essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice given under clause (*a*) of sub-section (*1*), if, in giving such notice, the provisions of that clause have been substantially complied with.".

Amendment of section 6C.

6. In section 6C of the principal Act, in sub-section (*2*), for the words "such person shall be paid", the words, brackets, figures and letter "such person shall, except as provided by sub-section (*3*) of section 6A, be paid" shall be substituted.

Insertion of new section 6E.

7. After section 6D of the principal Act, the following section shall be inserted, namely:—

Bar of Jurisdiction in certain cases.

"6E. Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, the Collector or, as the case may be, the judicial authority appointed under section 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of such property.".

Insertion of new section 15A.

8. After section 15 of the principal Act, the following section shall be inserted, namely:—

Prosecution of public servants.

"15A. Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of such offence except with the previous sanction—

(*a*) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(*b*) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.".

Validation of certain orders.

9. Notwithstanding any judgment, decree or order of any court,—

(*a*) every order made, or purporting to have been made, before the commencement of this Act, by the Central Government or any State Government under clause (*f*) of sub-section (2) of section 3 of the principal Act in relation to foodgrains, edible oilseeds or edible oils and every act done before such commencement under or in relation to such order, shall be as valid and effective as if the said clause (*f*) as substituted by this Act had been in force at all material times and the said order had been made thereunder;

(*b*) every payment, or offer of payment, of price of such foodgrains, edible oilseeds or edible oils made before the commencement of this Act, shall be deemed to have been made in accordance with law, if—

(*i*) the price so paid, or offered to be paid, had been fixed having regard to the factors specified in sub-section (3B) of section 3 of the principal Act as substituted by this Act; and

(*ii*) in the case of payment, or offer of payment, by a State Government, such payment or offer of payment had been made after consultation with the Central Government:

Provided that notwithstanding the retrospective operation of this section, no contravention of, or failure to comply with, any provisions of the Essential Commodities Act, 1955, as amended by this Act, shall render any person guilty of any offence punishable under the Essential Commodities Act, 1955, if such contravention or failure had occurred before the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

The Essential Commodities Act, 1955, provides for the regulation of production, supply, distribution and pricing of essential commodities. Experience gained in the working of the Act has indicated the need to make certain amendments in the Act. The amendments mainly relate to the following matters, namely:—

(*i*) in order to intensify the drive against hoarders and profiteers, it is proposed to provide that the powers of the Collector may also be exercised by an Additional Collector and such other officers, not below the rank of a Sub-Divisional Officer, as may be authorised by the Collector. A definition of the expression "Collector" is being inserted in the Act to achieve the said object;

(*ii*) levy orders made under section 3(2) (f) have been struck down by the High Court of Orissa on the ground that orders under that section could only require a person to sell any essential commodity "held in stock", and, consequently, such orders cannot be based on the quantity of land possessed by the concerned person. In order to meet the situation, it is proposed to provide that a levy order issued in relation to foodgrains, edible oilseeds and edible oils may fix, on a graded basis, the quantity to be sold by the producer, having regard to the estimated production of the crop in the concerned area and the aggregate area held by the producer under cultivation;

(*iii*) sub-section (3B) of section 3 is being substituted to provide for the procedure for fixing the price in the case of levy on foodgrains, edible oilseeds or edible oils, and further to provide for the criteria for the fixation of such price;

(*iv*) according to the provisions of section 3(2) (*j*) (*iii*), original books of accounts and documents, which are seized under the Act, are required to be returned to the persons from whom they had been seized. It is now proposed to retain the original documents and to empower the affected persons to make copies for their own use;

(*v*) the scope of section 6A is being enlarged so that the physical production of the seized commodities before the Collector may not be obligatory and to give the Collector a discretion to direct the production of such commodities only when he desires such commodities to be produced before him for inspection. The Collector is also being empowered to order the distribution of the seized foodgrains through fair price shops at the price fixed by the Government;

(*vi*) a new clause is being inserted in section 6B to ensure that the orders regarding confiscation of essential commodities may not be considered illegal merely by reason of any defect or irregularity in the notice served for the purpose;

(*vii*) a new section, namely, section 6E, is being inserted to provide that the courts would be debarred from making any order with regard to the possession, delivery, disposal or distribution of any essential commodity seized in pursuance of an order made under section 3;

(*viii*) in order to protect the public servants functioning under the Act against malicious and vexatious complaints, a new section, namely, section 15A, is being inserted providing that no cognizance shall be taken of any complaint against any public servant except with the previous sanction of the Central Government or, as the case may be, of the State Government.

NEW DELHI;
The 12th May, 1976.

A. C. GEORGE.

FINANCIAL MEMORANDUM

Under section 3(2)(f) of the principal Act, as proposed to be amended by clause 3(a) (i) of the Bill, Government is being empowered to make an order requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, any essential commodity, to sell the whole or a specified part of the quantity held in stock or produced or received by him to the Central Government or a State Government or to an officer or agent of such Government or to a corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Under section 3(3B) of that Act, as proposed to be amended by clause 3(b) of the Bill, the price to be paid for the compulsory acquisition of foodgrains, edible oilseeds or edible oils sold to Government shall be determined having regard to the controlled price, if any, the general crop prospects, the need for making the commodity available at fair prices to the weaker sections of the society and the recommendations, if any, of the Agricultural Prices Commission.

By and large, any such essential commodity will be required to be sold to the Food Corporation of India or to some such agency on behalf of the Central Government. There will, therefore, be no direct expenditure, in such cases, from the Consolidated Fund of India. If, however, any essential commodity is directed, in any case, to be sold to the Central Government, the expenditure will be incurred from the Budget allotment of the Ministry concerned.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Under section 3(2)(f) of the principal Act, as proposed to be amended by clause 3(a)(i) of the Bill, Government is being empowered to make an order requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, any essential commodity, to sell the whole or a specified part of the quantity held in stock or produced or received by him to the Central Government or a State Government or to an officer or agent of such Government or to a corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order and that in relation to foodgrains, edible oilseeds or edible oils, fix the quantity to be so sold having regard to the estimated production in relation to the area under cultivation. Every such order is required, under sub-section (6) of the said section 3, to be laid before Parliament as soon as it is made.

In the circumstances aforesaid, the delegation of legislative power is of a normal character, being relatable to issue of a notification for a specified purpose which would be laid before both the Houses of Parliament.

S. S. BHALERAO,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1976